

REPRESENTATIVE FOR PETITIONER:

Brian J. Clark
BARNES & THORNBURG
Elkhart, Indiana

REPRESENTATIVES FOR RESPONDENT:

Gordon Nusbaum, Middlebury Township Trustee/Assessor
Nancy Cook, First Deputy, Elkhart County Assessor’s Office
Wilmer McLaughlin, Middlebury Township and Elkhart County Property Tax
Assessment Board of Appeals (PTABOA) Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Will’s Far-Go Coach Sales,)	Petition Nos.: 20-034-95-3-7-00003
)	20-034-96-3-7-00003
Petitioner,)	
)	Personal Property
v.)	
)	County: Elkhart
Gordon Nusbaum, Middlebury)	Township: Middlebury
Township Trustee/Assessor,)	Assessment Years: 1995 and 1996
)	
Respondent.)	

Appeal from the Final Determination of
Elkhart Property Tax Assessment Board of Appeals

November 12, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issues presented for consideration by the Board were:

ISSUE 1– *Whether the Board has the authority to consider a Form 133 petition appealing a personal property assessment after the delinquent taxes have been certified to the court.*

ISSUE 2 – *Whether the Petitioner’s Form 133 petitions state a claim upon which relief may be granted.*

ISSUE 3 – *Whether the assessment to the Petitioner of units of inventory in Middlebury Township is improper.*

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-12, Will’s Far-Go Coach Sales filed Form 133 Petitions for Correction of an Error, petitioning the Board to conduct an administrative review of the above petitions. The Form 133 petitions were filed on December 5, 2000. The determinations of the Elkhart County PTABOA were issued on November 17, 2000. The Form 133 petitions were first filed with the Elkhart County Auditor on October 16, 2000.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on June 9, 2004, in Goshen, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
No one was sworn in.

For the Respondent:
Gordon Nusbaum, Middlebury Township Trustee/Assessor.
Nancy Cook, First Deputy, Elkhart County Assessor's Office.
5. The following exhibits were presented for the Petitioner:
Petitioner's Exhibit 1 – Affidavit of Eric Freeman, employee of Petitioner.
Petitioner's Exhibit 2 – A copy of *PPG Industries v. State Board of Tax Commissioners*, 706 N.E.2d 611 (Ind. Tax 1999).
Petitioner's Exhibit 3 – Petitioner's brief in support of Form 133 petitions.
Petitioner's Exhibit 4 – A copy of Ind. Code § 6-1.1-3-1.
Petitioner's Exhibit 5 – A copy of 50 Ind. Admin. Code 4.2-2.
6. The following exhibits were presented for the Respondent:
Respondent's Exhibit 1 – Notice of Assessment mailed to Petitioner, and Business Personal Property Return filed by Jayco, Inc., for the 1995 assessment year.
Respondent's Exhibit 2 – Form 103-N filed by Jayco, Inc. for the 1995 assessment year.
Respondent's Exhibit 3 – Notice of Assessment mailed to Petitioner for 1996 assessment year.
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – The Form 133 Petitions.
Board Exhibit B – Notices of Hearing dated March 25, 2004.
Board Exhibit C – Pre-hearing submissions.
8. The subject property consists of recreational vehicles, located on the property of Jayco, Inc. in Middlebury Township on the assessment dates in question.
9. The Administrative Law Judge did not conduct an on-site inspection of the subject property.

10. For 1995, the PTABOA determined the assessed value of the personal property to be \$20,000. For 1996, the PTABOA determined the assessed value of the personal property in question to be \$22,000.
11. For both 1995 and 1996, the Petitioner contends the assessed value of the property should be \$0.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

15. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

16. The relevant facts of this appeal are not in dispute. Middlebury Township discovered property owned by Will's Far-Go Coach Sales was located in its jurisdiction on March 1 of 1995 and 1996. The Township sent tax forms to the Petitioner for completion. The Petitioner believed the property was not assessable in Middlebury Township because it does not regularly do business there, and did not return the forms. The Township assessed the property, and notified the Petitioner of the assessment. The Petitioner neither filed appeals nor paid the taxes due. The delinquent taxes were certified to the Elkhart Circuit Court. The Petitioner then filed a Form 133, five years after the first Notice of Assessment was sent. The Elkhart Circuit Court has agreed not to take action until this Board decides whether the assessment was improper.

Issue 1: *Whether the Board has the authority to consider a Form 133 petition appealing a personal property assessment after the delinquent taxes have been certified to court.*

17. Petitioner contends the Board has the authority to consider the Form 133 petitions.
18. Respondent argues that Petitioner failed to follow statutory procedures in appealing the assessment. Thus, Petitioner has waived its right to have its petition reviewed by the Board.
19. The Board shall conduct an impartial review of all appeals concerning:
- (1) the assessed valuation of tangible property;
 - (2) property tax deductions; or
 - (3) property tax exemptions;
- that are made from a determination by an assessing official or a county property tax

assessment board of appeals to the Indiana board under any law. *Ind. Code § 6-1.5-4-1(a)*.

20. The Board concludes that it has subject matter jurisdiction over the Petitioner's Form 133 appeals because they concern the assessed valuation of personal property. *Ind. Code § 6-1.5-4-1(a)(1)*.
21. However, the Board has no authority to set aside any values certified by the Elkhart Circuit Court. *Ind. Code § 6-1.1-23-12*.

ISSUE 2: *Whether the Petitioner's Form 133 petitions state a claim upon which relief may be granted.*

22. The Petitioner presented the following arguments in regard to this issue:
 - A. Local officials have the authority to correct an erroneous assessment at any time.
Petitioner is asking only that the assessment be corrected. Petitioner is not asking for a refund, which has a three year statute of limitations, because no tax has been paid. Petitioner contends that there is no statute of limitations for correcting an erroneous assessment via the Form 133.
 - B. *Ind. Code § 6-1.1-15-12* allows the county auditor to submit a certificate of correction to the county treasurer to keep as settlement. In addition, *Ind. Code § 6-1.1-23-12* permits the circuit court to set aside a judgment, and the person is not liable for delinquent taxes.
 - C. Petitioner contends that, according to *PPG Industries v. State Board of Tax Commissioners*, 706 N.E. 2d 611 (Ind. Tax 1999), the assessment is illegal because the Petitioner does not regularly conduct business in Middlebury Township. Because the property is illegally assessed, the assessment must be set aside, and the procedures followed leading up to that act are irrelevant.

23. The Respondent presented the following testimony and arguments in regard to this issue:
- A. Statutory procedures were not followed in appealing the assessment, and the appeal is not timely. No one objected to the assessment until the county attempted to collect the delinquent taxes.
 - B. In both 1995 and 1996, the property in question was discovered in Middlebury Township due to the filing of an Information Return of Not Owned Property (Form 103-N) by Jayco, Inc. Business personal property returns were then sent to the Petitioner for completion, as well as to all other taxpayers reported by Jayco, Inc. to have property at that location. When the forms were not completed and filed, Middlebury Township assessed the property, and mailed Notice of Assessment forms to the Petitioner. The assessments became official. The Petitioner filed no appeals, and did not pay the taxes. After the delinquent taxes were certified to the Elkhart Circuit Court, the Petitioner filed a Form 133, five years after the first Notice of Assessment was mailed. *Nusbaum and Cook testimony, Respondent's Exhibits 1-3.*
 - C. The Respondent contends the assessment is correct because the property was assessed where it was situated on March 1 of each year.
24. Summarizing, the Petitioner contends the assessment is illegal, and can be corrected at any time. It is not asking for a refund, because no taxes were paid. The Respondent argues that statutory deadlines have passed, and the Petitioner has therefore waived its right to appeal.
25. At issue, therefore, is whether the Petitioner has followed statutory procedures and filed appeals upon which relief may be granted.
26. As the Petitioner correctly asserts, Indiana Code § 6-1.1-15-12 contains absolutely no time provisions for filing a claim for a refund or a petition for correction of an error. The Board's analysis, however, does not end there.
27. Indiana Code § 6-1.1-26-1 provides that a person may file a claim for the refund of all or a portion of a tax installment which he has paid. However, in accordance with Indiana

Code § 6-1.1-26-1(2), the claim must be filed within three (3) years after the taxes were first due.

28. Property taxes are first due on May 10 of the year following the year of assessment. *50 IAC 4.2-2-10.*
29. Discussing the appeals process, Indiana Code § 6-1.1-15-10(a)(1) provides, in relevant part, that the amount of taxes which the taxpayer is required to pay, pending the final determination of the assessment or increase in assessment, shall be based on the assessed value reported by the taxpayer on the taxpayer's personal property return if a personal property assessment, or an increase in such an assessment, is involved.
30. Under the plain meaning of these statutes, when a taxpayer seeks a refund of property taxes, it is required to file the claim for refund within three years of the date when the taxes were first due. The amount of taxes due on these dates is based on the assessed value reported by the taxpayer, or an increase in such an assessment.
31. The Petitioner contends this analysis is not relevant to the facts of this appeal. More specifically, the Petitioner asserts that, because it paid no taxes, it is not seeking a refund.
32. However, the Petitioner was still required to pay its taxes on the due date. Although an appeal might ultimately reduce (or increase) the final tax liability, the tax liability based on the assessments determined by the local assessor was due on May 10 of the year following the year of the assessments. The Petitioner was therefore required to initiate the Form 133 process within three years of the due date of these tax liabilities. To find otherwise would render Indiana Code § 6-1.1-26-1 a nullity. See *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954, 958 (Ind. Tax 1997), *review denied* (The Tax Court will not construe a statute in a manner that will render another statute a nullity.)

33. The clear intent of the legislature in establishing a three-year limit for refunds was to permit local officials to establish, with some degree of certainty, the amount of revenue available to provide services to their communities. Eliminating a tax liability through the filing of a Form 133, five years after the tax assessment, would produce the same reduction in available and anticipated funds as a tax refund. See *Caylor-Nickel Clinic, P.C. v. Indiana Department of Revenue*, 569 N.E. 2d 765, 768 (Ind. Tax 1991) *aff'd*, 587 N.E. 2d 1311 (Ind. 1992) (“The foremost goal of statutory construction is to determine and give effect to the true intent of the legislature.”)
34. The Petitioner received timely notice of the assessments and had ample opportunity to either pay the taxes or appeal the assessments. The Petitioner chose to do neither until actions were taken to collect the delinquent taxes.
35. The Petitioner has now appealed its assessment for the 1995 and 1996 tax years. However, to obtain a refund or reduction in an assessment, the Petitioner was required to file a Form 133 for correction of the 1995 assessment by May 10, 1999 (three years from May 10, 1996). Likewise, the Form 133 for the 1996 assessment was required to be filed by May 10, 2000.
36. The Form 133 petitions for both tax years were not filed with the Elkhart County Auditor until October 16, 2000. Thus, the Form 133 petitions for the 1995 and 1996 tax years do not state a claim upon which relief may be granted. There is no change in the assessment as a result of this issue.

Issue 3: Whether the assessment to the Petitioner
of units of inventory in Middlebury Township is improper.

37. Because the Form 133 petitions for both 1995 and 1996 fail to state a claim upon which relief can be granted, the underlying issue of the propriety of the original assessment is moot. The Board will not consider or discuss this issue.

SUMMARY OF FINAL DETERMINATION

ISSUE 1: Whether the Board has the authority to consider a Form 133 petition appealing a personal property assessment after the delinquent taxes have been certified to court.

38. The Board has the authority to consider the Form 133 petitions because they concern the assessed value of personal property.

ISSUE 2: Whether the Petitioner's Form 133 petitions state a claim upon which relief may be granted.

39. The Board has no authority to set aside any values certified by the Elkhart Circuit Court. Further, although the Board has jurisdiction over the Petitioner's Form 133 petitions, they were not filed within three years from the date the taxes were first due. The Petitioner's petitions therefore fail to state a claim upon which relief may be granted. There is no change in the assessment as a result of this issue.

Issue 3: Whether the assessment to the Petitioner of units of inventory in Middlebury Township is improper.

40. Because the Form 133 petitions failed to state a claim upon which relief may be granted, this issue is moot and was not considered.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.